

ENTERED

February 09, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOAQUIN ALVAREZ,

Plaintiff,

V.

REGIONAL DIRECTOR, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00222

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

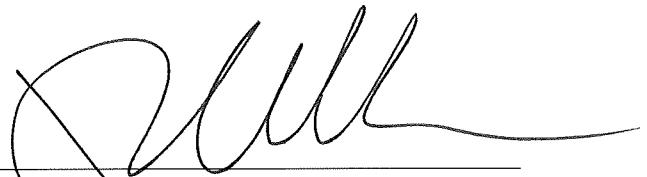
Before the Court is Magistrate Judge Julie K. Hampton's Memorandum and Recommendation ("M&R"), filed on December 1, 2022. (D.E. 45). The M&R recommends that the Court **DISMISS without prejudice** Plaintiff's claims against John Doe Transportation Officer No. 1 because Plaintiff failed to comply with the Magistrate Judge's D.E. 43 order and with Federal Rule of Civil Procedure 4(m). (D.E. 45, p. 3); *see* (D.E. 43, p. 3) (ordering Plaintiff to show cause as to why this claim should not be dismissed without prejudice for failing to timely serve John Doe Transportation Officer No. 1).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, LP*, No. H-14-2700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015) (Harmon, J.). The Court finds the M&R's findings and recommendations are not clearly erroneous or contrary to law. After a pro se plaintiff receives notice, a district court may dismiss an action *sua sponte* if the pro se plaintiff fails to

timely serve defendants under Rule 4(m). *Drgac v. Treon*, No. H-07-4283, 2008 WL 4746984, at *1 (S.D. Tex. Oct. 27, 2008) (Atlas, J.) (citing *Linsey v. U.S. R.R. Retirement Bd.*, 101 F.3d 444, 446 (5th Cir. 1996)). A court may also dismiss an action under Rule 41(b) if the plaintiff “fails to . . . comply with these rules or a court order.” FED. R. CIV. P. 41(b); *see also Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (noting that a district court may dismiss an action *sua sponte* for failure to prosecute or to comply with any court order).

Accordingly, the Court **ADOPTS** the M&R in its entirety. (D.E. 45). Pursuant to Rule 41(b), the Court **DISMISSES without prejudice** Plaintiff’s claims against John Doe Transportation Officer No. 1 for failure to comply with Rule 4(m) and for failure to comply with court order. *See* FED. R. CIV. P. 41(b). The Clerk of Court is **DIRECTED** to **TERMINATE** John Doe Transportation Officer No. 1 as a defendant in this case.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Signed: Corpus Christi, Texas
February 8th, 2023